

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-132489-10

Date:

December 23, 2010

Legend:

X =

A =

B =

a =

Date1 =

Dear :

This responds to a letter dated July 14, 2010 and subsequent correspondence, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 754 of the Internal Revenue Code.

Facts

According to the information submitted, X is a limited liability company that is treated as a partnership for federal tax purposes. A, who was one of the partners of X, sold his interest in X to B on Date1. At the time of the sale, A owned a percent interest in X.

X relied on its tax advisors for tax advice. X, however, inadvertently failed to timely make an election under § 754 for the year of the sale. X represents that it has

acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that it is not using hindsight in making the election.

Law and Analysis

Section 754 provides that a partnership may elect to adjust the basis of partnership property where there is a distribution of property or a transfer of a partnership interest. The election applies to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which the election is filed and all subsequent years.

Section 1.754-1(b) of the Income Tax Regulations provides that an election under § 754 is made in a written statement filed with the partnership return for the taxable year during which the distribution or transfer occurs. For the election to be valid, the return must be filed no later than the time for filing the return for the taxable year, including extensions.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose deadline is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides rules for requesting extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

Conclusion

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 120 days following the date of this letter to make an election under § 754 effective for the taxable year ending Date1. The election should be made in a written statement filed with the appropriate service center

for association with X's return. A copy of this letter should be attached to the statement filed.

As a condition for this late election relief, X and any affected taxpayers must file, within 120 days of the date of this letter, their federal income tax returns for the taxable year ending Date1 through the present consistent with X having made a timely § 754 election effective for the taxable year ending Date1. Copies of this letter should be attached to any returns or amended returns.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the transaction described above under any other provision of the Code. Specifically, we express no opinion as to whether or not X is a partnership for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this ruling will be sent to the taxpayer's representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: Cornelia J. Schnyder
Cornelia J. Schnyder, Senior Technician Reviewer
Branch 1
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
Copy of this letter
Copy for § 6110 purposes

cc: